IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 18846 of 2006
DATE OF DECISION: 30.11.2006
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Maharaja Agarsain Institute of Medical Research & Education, Agroha

..PETITIONER

VS.

Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Vinod Gupta, Advocate
for the petitioner.
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ARVIND KUMAR, J.

The services of respondent No.2-workman were terminated on 25.12.1998, as a result thereof an industrial dispute was raised by him seeking his re-instatement with all consequential benefits. His stand was that his services were terminated by the petitioner-management without complying with the provisions of the Industrial Disputes Act, 1947(for short the Act)

The dispute was contested by the petitioner-management on the ground that the services of the respondent were terminated on account of stoppage of grant-in-aid by the State Government, after offering retrenchment compensation. It was also pleaded that the respondent never ever completed 240 days in any calendar year.

Thereafter, the Labour Court after conclusion of proceedings, held that the services of the respondent-workman were terminated by the petitioner-management in violation of provisions of Section 25-F of the Act. Accordingly, it set aside the termination of the services of the workman and ordered his re-instatement with continuity of service and all consequential service benefits with 50% back wages.

Dissatisfied with the same, the petitioner-management has filed the instant petition under Articles 226/227 of the Constitution of India for setting aside the impugned award, copy Annexure P-10.

We have heard learned counsel for the petitioner and have gone through the paper-book carefully as also the impugned award.

Learned counsel for the petitioner, questioning the legality of the impugned award, has argued that the Labour Court has erred in ignoring the evidence produced by the petitioner-management to the effect that the status of respondent No.2 was only a contractor and at no point of time, he was an employee with the petitioner-management. In support of his contention, learned counsel has relied upon various agreements and receipts of payments as Annexures P-1 to P-8.

This contention of petitioner does not merit acceptance.

A bare perusal of the reply Annexure P-9 filed by the petitioner-management to the claim statement of respondent No.2 before the Labour Court shows that no plea that respondent No.2 was a contractor and not its employee was ever raised by the petitioner-management. Rather, it was submitted in the reply that respondent No.2 was appointed as a Daily Wager in the month of May 1996, on purely temporary basis with no lien to the post. It is only at the stage when management evidence was going on, its witness deposed to the effect that the services of respondent No.2 were engaged as a contractor for accomplishment of certain works. Thus, prior to that stage it was nowhere the case of the petitioner that respondent No.2 was not its employee. In other words, at no juncture the workman was afforded opportunity to rebut the said stand taken abruptly by the petitioner-management, dehors to its pleadings taken in the reply while contesting the claim of the workman. Even when the workman appeared in the witness box before the Labour Court, he was not confronted with the fact that his status was of a contractor alone and not an employee of the petitioner-management. Therefore, the requisite pleadings having not raised at the appropriate stage, the Labour Court has rightly excluded the said agreements, produced by the petitioner-management, from the zone of consideration.

The precise case of the respondent-workman was that he worked from 11.5.1986 to 25.12.1998 and had completed 240 days

preceding twelve calendar months from the date of his termination; he was not paid any retrenchment compensation and as such his termination was illegal and in violation of provisions of Section 25-F of the Act ibid. It is implicit in the provisions under Section 25-F of the Act that it confers a right on the workman to receive retrenchment compensation. Thus, in order to be entitled to such compensation under this clause, a workman should have worked 240 days during the period of twelve calendar months preceding the date of retrenchment. It is itself case of the petitioner-management that the services of respondent No.2 were terminated after offering the retrenchment compensation. A bare perusal of the impugned award also shows that a suggestion was also put to the respondent in his cross-examination to the effect that he was paid retrenchment compensation, to which he denied. Since only on completion of 240 days the question of payment of compensation arises, therefore, the petitioner-department, by virtue of the said plea, in a way has accepted the plea of the workman of having worked for 240 days preceding twelve calendar months from the date his services were retrenched. The petitioner-department had also not led any evidence with regard to having paid the retrenchment compensation The learned Labour Court in absence of any evidence with regard to the payment of retrenchment compensation has rightly concluded that there was non-compliance of provisions of Section 25-F of the Act and his termination was invalid.

We find no infirmity in the impugned award of the Labour Court. The petition is wholly without merit and the same is dismissed accordingly.

(ARVIND KUMAR)
JUDGE

November 30,2006 **(J.S. NARANG)**
Jiten **JUDGE**